



PUBLIC NOTICE

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**CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON THE
ACCESSIBILITY OF COMMUNICATIONS TECHNOLOGIES FOR THE
FIRST BIENNIAL REPORT UNDER THE TWENTY-FIRST CENTURY COMMUNICATIONS
AND VIDEO ACCESSIBILITY ACT**

Pleading Cycle Established

CG Docket No. 10-213

Comment Date: July 25, 2012

I. Introduction

1. By this Public Notice (Notice) and consistent with the requirements of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),¹ the Consumer and Governmental Affairs Bureau (CGB) of the Federal Communications Commission (FCC or Commission) hereby seeks comment from the public to inform the Commission's preparation of the biennial report required by the CVAA, to be submitted to Congress by October 8, 2012.² Public comment will assist the Commission in assessing the level of compliance with congressional mandates that telecommunications and advanced communications services and equipment be accessible to and usable by individuals with disabilities, the effect of related recordkeeping and enforcement requirements, and the extent to which accessibility barriers still exist with respect to new communications technologies. The Commission will seek public comment on its tentative findings on these matters before it submits its biennial report to Congress.³

II. Background

2. The CVAA requires the Commission to take various steps to ensure that people with disabilities have access to emerging communications technologies in the 21st Century. The CVAA also requires the Commission to submit a report to Congress every two years on the level of compliance with the CVAA's communications accessibility obligations, the extent to which accessibility barriers still exist to new communications technologies, and related matters.⁴ The first of these biennial reports is due to Congress by October 8, 2012, two years after the CVAA was enacted. In this Notice, we seek comment

¹ Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.); Pub. L. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA).

² See Section 717(b)(1) of the Communications Act, as added by the CVAA, codified at 47 U.S.C. § 618(b)(1).

³ See 47 U.S.C. § 618(b)(2).

⁴ *Id.*

on a range of issues to inform the Commission's preparation of this biennial report.⁵ As required by the CVAA, the Commission also will seek comment on the tentative findings contained in this report before its submission to Congress.⁶

3. Among other things, the CVAA requires the Commission's biennial report to contain:

- An assessment of the level of compliance with Sections 255, 716, and 718 of the Communications Act (Act);
- An evaluation of the extent to which any accessibility barriers still exist with respect to new communications technologies; and
- An assessment of the effect of the requirements of Section 717 of the Act on the development and deployment of new communications technologies.⁷

4. Pursuant to Section 255 of the Act and the Commission's implementing rules and requirements, telecommunications and interconnected voice over Internet protocol (VoIP) service providers and equipment manufacturers are required to make their services and equipment accessible to and usable by individuals with disabilities, if readily achievable (defined as "easily accomplishable and able to be carried out without much difficulty or expense").⁸ The Commission has defined services covered under Section 255 to include local and long distance telephone service, call waiting, speed

⁵ In this Notice, as noted below, we seek comment only on those report-related issues that can be best informed by public input. For example, the CVAA requires the Commission to include information on the number and nature of complaints received by the Commission alleging violations of Sections 255, 716, and 718 of the Communications Act, a description of the actions taken to resolve such complaints, the length of time taken to resolve each complaint, and the extent to which any appeals or writs of mandamus have been filed in response to Commission actions to resolve those complaints. See 47 U.S.C. §§ 618(b)(1)(C)-(F). This information is already in the possession of the Commission and, therefore, is not the subject of this Notice.

⁶ See 47 U.S.C. § 618(b)(2).

⁷ See 47 U.S.C. §§ 618(b)(1)(A), (B), and (G).

⁸ See 47 U.S.C. § 255 (referencing 42 U.S.C. § 12181(9)); see also 47 C.F.R. Part 6 and Part 7. When accessibility is not readily achievable, covered entities must ensure that their services and equipment are compatible with existing peripheral devices or specialized equipment commonly used by individuals with disabilities to achieve access, if readily achievable. *Id.* In 2007, the Commission extended the Section 255 accessibility obligations to interconnected VoIP service providers and equipment manufacturers. See *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, 22 FCC Rcd 11275 (2007). The Act defines "telecommunications" as the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(50). It defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(53). The Act also defines "interconnected VoIP service" as such term is defined in section 9.3 of the Commission's rules, as such section may be amended from time to time. 47 U.S.C. § 153(25); 47 C.F.R. § 9.3. Section 9.3, in turn, defines interconnected VoIP as a service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment; and (4) permits users generally to receive calls that originate on the public switched telephone network (PSTN) and to terminate calls to the PSTN. 47 C.F.R. § 9.3. In other words, interconnected VoIP services enable people to make calls to and receive calls from users of traditional telephone service.

dialing, call forwarding, computer-provided directory assistance, call monitoring, caller identification, call tracing, and repeat dialing.⁹ Equipment covered under Section 255 includes, but is not limited to, customer premises equipment, such as wireline, cordless, and wireless telephones, fax machines, and answering machines.¹⁰ In addition, the Commission's Section 255 rules cover voice mail and interactive voice response systems (phone systems that provide callers with menus of choices).¹¹

5. Section 716 of the Act requires advanced communications service providers and equipment manufacturers to make their services and equipment accessible to and usable by individuals with disabilities, if achievable.¹² These requirements apply to providers of non-interconnected VoIP services, electronic messaging services, and interoperable video conferencing services, and to manufacturers of equipment used for these services.¹³ Section 718 of the Act requires Internet browsers built into mobile phones to be accessible to and usable by individuals who are blind or visually impaired,

⁹ See *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, 6449, ¶ 77 (1999) (*Section 255 Order*). See also 47 C.F.R. Part 6.

¹⁰ The Communications Act defines telecommunications equipment as “equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).” 47 U.S.C. § 153(52). It defines “customer premises equipment” as “equipment employed on the premises of a person (other than a carrier) to originate, route or terminate telecommunications.” 47 U.S.C. § 153(16).

¹¹ *Section 255 Order*, 16 FCC Rcd 6417, 6455-6462, ¶¶ 93-108; 47 C.F.R. Part 7.

¹² See 47 U.S.C. § 617. The new section defines “achievable” to mean with reasonable effort or expense, listing four factors the Commission must consider when making such determinations. 47 U.S.C. § 617(g). See also 47 U.S.C. § 153(1) (defining “advanced communications services” as “(A) interconnected VoIP service; (B) non-interconnected VoIP service; (C) electronic messaging service; and (D) interoperable video conferencing service”). Although the Act’s definition of “advanced communications services” also includes interconnected VoIP service, the accessibility obligations of interconnected VoIP service providers and equipment manufacturers are governed by the requirements of Section 255 of the Act. See 47 U.S.C. §§ 255 and 617(f). See also n.8, *supra*.

¹³ See 47 U.S.C. §§ 617(a), (b), and (g). In contrast to interconnected VoIP services that enable people to make *and* receive calls over the Internet *and* the telephone system, non-interconnected VoIP services include services that enable people to make *or* receive calls over the Internet or enable real-time voice communications solely over the Internet. See 47 U.S.C. § 153(36). Electronic messaging services enable real-time or near real-time text messages between individuals over communications networks. See 47 U.S.C. § 153(19). Examples of electronic messaging services include e-mail, SMS text messaging, and instant messaging. See *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; Amendments to the Commission’s Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; and In the Matter of Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision*, CG Docket Nos. 10-213 and 10-145, WT Docket No. 96-198, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-151, 26 FCC Rcd 14557, 14574, ¶ 43 (2011) (*ACS Report and Order* and *ACS FNPRM*) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-151A1.pdf. Interoperable video conferencing services are real-time video communications, including audio, to enable users to share information. See 47 U.S.C. § 153(27). The Commission is considering the definition of “interoperable” as it applies in the context of “interoperable video conferencing services” as part of its ongoing advanced communications rulemaking proceeding. See *ACS Report and Order* and *ACS FNPRM* 26 FCC Rcd 14684-14687, ¶¶ 301-305. See also 47 C.F.R. Part 14.

if achievable.¹⁴ Section 717 of the Act added new recordkeeping and enforcement obligations for entities covered by the accessibility obligations contained in Sections 255, 716, and 718 of the Act.¹⁵

6. In October 2011, the Commission adopted rules to implement the new accessibility mandates of Section 716 and the recordkeeping and enforcement provisions of Section 717.¹⁶ The Commission also proposed rules for the implementation of Section 718.¹⁷ Full compliance with the rules implementing Sections 716 and 717 is not required until October 8, 2013, but covered entities must begin taking accessibility into account in the design of their products and services beginning January 30, 2012,¹⁸ and begin filing with the Commission certifications that they have kept records pertaining to the accessibility of their products beginning on January 30, 2013.¹⁹ In addition, once they are put into effect in October 2013, the new rules require the Commission, within 180 days of the filing of an informal complaint, to investigate the allegations in the complaint and issue an order concluding the investigation, unless the complaint is resolved before that time.²⁰ Accordingly, this first biennial report will not be able to evaluate compliance with these sections as fully effective. Nonetheless, it will consider the extent to which initial industry efforts to comply with Section 716, as well as to maintain records on such efforts in preparation for responses to complaints, have begun having an impact, if any, on compliance with Sections 255 and 716. It will also consider accessibility barriers pertaining to these sections that still exist, and the development and deployment of new communications technologies that are accessible to people with disabilities. This initial biennial report will not assess the accessibility of Internet browsers required on mobile devices under Section 718 of the Act, however, because under the CVAA, that section is not set to go into effect until October 8, 2013,²¹ and the Commission has not yet issued final rules implementing that provision.

III. Comment Sought on Industry Compliance with Section 255 and Section 716

7. We seek comment on the level of compliance with the obligations of Section 255 and the Commission's implementing rules and requirements to make telecommunications and interconnected VoIP services and equipment used with these services accessible by people with disabilities since the enactment of the CVAA on October 8, 2010. Specifically, we seek input on the state of accessibility of services and equipment used with the following: (1) "non-mobile" services, including, but not limited to analog and digital telephone handsets and cordless phones used with landline and interconnected VoIP

¹⁴ See 47 U.S.C. § 619.

¹⁵ See 47 U.S.C. § 618.

¹⁶ See, generally, *ACS Report and Order* and *ACS FNPRM*, 26 FCC Rcd 14557.

¹⁷ *Id.*

¹⁸ The rules adopted by the Commission to implement Sections 716 and 717 of the Act became effective January 30, 2012, 30 days after publication in the Federal Register on December 30, 2011. See *ACS Report and Order* and *ACS FNPRM*, 26 FCC Rcd 14696, ¶ 328. See also 76 Fed. Reg. 82240 (Dec. 30, 2011).

¹⁹ Specifically, covered entities must keep records of information about their efforts to consult with people with disabilities, descriptions of the accessibility features of their products and services, and information about the compatibility of these products and services with peripheral devices or specialized customer premises equipment commonly used by people with disabilities to achieve access. See 47 U.S.C. § 618(a)(5)(A). These recordkeeping requirements begin January 30, 2013, one year after January 30, 2012, the effective date of the regulations. *Id.*

²⁰ See 47 U.S.C. § 618(a)(3)(B).

²¹ See CVAA, Pub. L. No. 111-260, § 104(b).

services; and (2) “mobile” or wireless services, including basic phones and smart phones.²² For guidance on determining the state of accessibility, we direct commenters to the definition of “accessible” that governs the Commission’s Section 255 obligations, contained in Parts 6 and 7 of our rules.²³ For example, to what extent do the input and output controls of these telecommunications and interconnected VoIP services and devices used with these services offer redundant capabilities, so that people without hearing, vision, or speech, or with limited manual dexterity, cognitive skills, or other abilities can operate them. To the extent that accessible services and devices are available, how easy is it to locate these services and devices in mainstream retail establishments? To what extent are services and devices offered with a range of low-end and high-end features, functions, and prices available to the general public also accessible to individuals with disabilities? Where services and devices are not accessible, to what extent are service providers and manufacturers making these compatible with peripheral devices and specialized customer premises equipment commonly used by people with disabilities to achieve access?²⁴ To what extent are telecommunications equipment and customer premises equipment passing through non-proprietary, industry-standard codes, translation protocols, formats and other information needed to provide telecommunications in an accessible format?²⁵ To what extent are signal compression technologies removing information needed for access?²⁶ Generally, to what extent do barriers still exist with respect to products and services covered under Section 255 of the Act?

8. To what extent are telecommunications and interconnected VoIP service providers and equipment manufacturers ensuring access to information and documentation – including user guides, bills, installation guides, and product support communications – to people with disabilities?²⁷ For example, are companies providing information in Braille and other alternate formats? To what extent are companies providing training on the accessibility of their products and services to customer service representatives, technical support personnel and others having direct contact with the public? Are manufacturers and service providers including people with disabilities in their market research, product design, testing, pilot demonstrations, and product trials?²⁸ To what extent are covered entities working cooperatively with disability-related organizations in their efforts to incorporate accessibility, usability, and compatibility of equipment and services throughout their processes for product design, development, and fabrication?²⁹ Are covered entities making reasonable efforts to validate unproven access solutions through testing with people with disabilities or with organizations that have expertise with people with disabilities?³⁰ Finally, we seek comment on any other issues relevant to assessing the level of compliance with Section 255 and the Commission’s implementing rules, as these pertain to the accessibility and usability of telecommunications and interconnected VoIP services and equipment.

²² We seek comment on the full range of mobile phones and other wireless devices that are used for telecommunications or interconnected VoIP services, including basic mobile phones used primarily or exclusively for voice calls, as well as high-end wireless devices that are used for voice, text, data and other computing capabilities.

²³ See 47 C.F.R. §§ 6.3(a); 7.3(a).

²⁴ See 47 C.F.R. §§ 6.3(b); 7.3(b).

²⁵ See 47 C.F.R. §§ 6.9; 7.9.

²⁶ *Id.*

²⁷ See 47 C.F.R. §§ 6.11; 7.11.

²⁸ See 47 C.F.R. §§ 6.7(1), (2); 7.7 (1), (2).

²⁹ See 47 C.F.R. §§ 6.7(b)(3); 7.7(b)(3).

³⁰ See 47 C.F.R. §§ 6.7(b)(4); 7.7(b)(4).

9. As noted above, Section 716 of the Act requires advanced communications service providers and manufacturers to begin taking accessibility into account in the design of their products and services beginning January 30, 2012.³¹ To what extent, if any, has this obligation begun to have an impact on the accessibility of non-interconnected VoIP, electronic messaging, and interoperable video conferencing services and the devices used to access these services? Have companies established accessibility-related units or divisions within their organizational structures as a result of the new requirements in Section 716? In those instances where companies already had organizational divisions devoted to accessible design and review prior to enactment of the CVAA, have such companies expanded these divisions in response to the CVAA's passage? Have companies begun to consider accessibility earlier in their design processes than before enactment of the CVAA? We seek comment on any other ways in which Section 716 has had an impact on the accessibility of advanced communications services and equipment to date.

IV. Effect of Accessibility Recordkeeping, Complaint, and Enforcement Requirements

10. As noted above, the CVAA requires the Commission to include in its biennial report an assessment of the effect of the accessibility recordkeeping requirements on the development and deployment of new communications technologies.³² Entities required to provide accessible advanced communications services and equipment under the CVAA must certify annually to the Commission that they have kept records pertaining to the accessibility of their products beginning January 30, 2013.³³

11. Since the enactment of the CVAA on October 8, 2010, have service providers and equipment manufacturers taken measures that will result in increased accessibility for people with disabilities in anticipation of the new recordkeeping and enforcement requirements? If so, to what extent have these companies developed best practices that can be shared with other covered entities? Since the accessibility rules for advanced communications became effective in January 2012, to what extent and how have industry accessibility considerations (undertaken during the design and development of services and equipment) increased the accessibility of emerging new communications technologies? Are there templates for recordkeeping that companies are willing to make public for the use of others? We seek comment on recommendations by companies that have already initiated compliance with their recordkeeping obligations for how best these obligations can be fulfilled. Has keeping accessibility-related records served to raise awareness within companies? To what extent has this obligation, as well as the enforcement procedures set to take effect in October 2013,³⁴ increased collaboration among industry, consumers with disabilities, and other stakeholders? We seek comment on any other ways in which the accessibility recordkeeping requirements have had an effect on the development and deployment of new communications technologies.

V. Accessibility Barriers to New Communications Technologies

12. The CVAA requires the Commission to include, in its biennial report, an evaluation of the extent to which any accessibility barriers still exist with respect to new communications

³¹ See ¶ 6, *supra*.

³² See ¶ 3, *supra*. See also 47 U.S.C. § 618(b)(1)(G).

³³ See 47 U.S.C. § 618(a)(5)(B).

³⁴ See ¶ 6, *supra*.

technologies.³⁵ We note that the CVAA leaves open the definition of “new communications technologies” in this section, suggesting that the scope of this inquiry may be broader than an inquiry into the barriers that exist with respect to “telecommunications” and “advanced communications services” technologies covered under Section 255 and Section 716. We seek comment on the extent to which, in the preparation of this report, the Commission should be evaluating the accessibility of communications technologies that fall outside these two categories. To what extent have new communications services, hardware, software, applications, or plug-ins been deployed to the general public since enactment of the CVAA on October 8, 2010? What accessibility barriers still exist with respect to these new communications technologies? Will these accessibility barriers be addressed by the advanced communications obligations under Section 716 or the mobile phone Internet browser accessibility obligations under section 718 required as of October 8, 2013?³⁶ We seek comment on any other issues relevant to evaluating the extent to which accessibility barriers to new communications technologies still exist.

VI. Procedural Matters

13. *Ex Parte Rules.* The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.³⁷ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

14. *Filing Requirements.* Interested parties may file comments on or before the date indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). All comments should refer to **CG Docket No. 10-213**. Please title comments responsive to this Notice as “PN Comments – Accessibility of Communications Technologies.” Further, we strongly encourage parties to develop responses to this Notice that adhere to the organization and structure of the questions in this Notice.

³⁵ See 47 U.S.C. § 618(b)(1)(B).

³⁶ See ¶ 6, *supra*.

³⁷ 47 C.F.R. §§ 1.1200 *et seq.*

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

15. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202- 418-0530 (voice), 202- 418-0432 (TTY). Individuals with disabilities may request assistance from the Disability Rights Office to file comments in the Commission's Electronic Comment Filing System by sending an e-mail to dro@fcc.gov.

16. *Additional Information.* For further information about this Public Notice, please contact Rosaline Crawford at 202- 418-2075 or by e-mail to Rosaline.Crawford@fcc.gov, Disability Rights Office, Consumer & Governmental Affairs Bureau, Federal Communications Commission.

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